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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/662,774	09/15/2003	Paul Winniczuk	56737/4	2184
31013	7590 09/19/2006		EXAM	INER
KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 1177 AVENUE OF THE AMERICAS NEW YORK, NY 10036			WONG, LESLIE A	
			ART UNIT	PAPER NUMBER
			1761	
			DATE MAILED: 09/19/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

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	Application No.	Applicant(s)			
Office Action Comment	10/662,774	WINNICZUK, PAUL			
Office Action Summary	Examiner	Art Unit			
	Leslie Wong	1761			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply					
A SHORTENED STATUTORY PERIOD FOR REPL WHICHEVER IS LONGER, FROM THE MAILING D  - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period  - Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailine earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 136(a). In no event, however, may a reply be tim will apply and will expire SIX (6) MONTHS from e, cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D (35 U.S.C. § 133).			
Status					
<ol> <li>Responsive to communication(s) filed on</li></ol>	s action is non-final. ince except for formal matters, pro				
Disposition of Claims	•				
4) Claim(s) 1-21 is/are pending in the application 4a) Of the above claim(s) is/are withdra 5) Claim(s) is/are allowed. 6) Claim(s) is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) 1-21 are subject to restriction and/or  Application Papers  9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) accomposite and applicant may not request that any objection to the	wn from consideration. election requirement. er. cepted or b) objected to by the f				
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.					
Priority under 35 U.S.C. § 119	Name of the according of the original original original origin	, 10.1011 01 10.1111 1 10.1111			
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>					
Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  3) Information Disclosure Statement(s) (PTO/SB/08)  Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Di 5) Notice of Informal P 6) Other:	ate			

## **DETAILED ACTION**

## Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Claims 1-7 and 16-21, drawn to a preservative and food containing, classified in class 426, subclass 321.
- II. Claims 8-15, drawn to a method of making a preservative, classified in class 426, subclass 321.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

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requirement be traversed (37 CFR 1.143) and (ii) identification of the claims

encompassing the elected invention.

election shall be treated as an election without traverse.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Heslie Wong Leslie Wong

Primary Examiner

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LAW September 15, 2006